



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R09-OAR-2022-0953; FRL-10502-01-R9]

#### Designation of Areas for Air Quality Planning Purposes; California; Coachella Valley

#### Ozone Nonattainment Area; Reclassification to Extreme

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is proposing to approve a request from the State of California to reclassify the Coachella Valley ozone nonattainment area from “Severe-15” to “Extreme” for the 2008 ozone national ambient air quality standards (NAAQS). This action does not reclassify any areas of Indian country within the boundaries of the Coachella Valley 2008 ozone nonattainment area. Upon final reclassification of the Coachella Valley ozone nonattainment area as an Extreme nonattainment area for the 2008 ozone NAAQS, the applicable attainment dates would be as expeditiously as practicable but no later than July 20, 2032. The EPA is proposing to establish a deadline of no later than 18 months from the effective date of reclassification for submittal of revisions to the Coachella Valley portion of the California SIP to meet additional requirements for Extreme ozone nonattainment areas. Lastly, the EPA is proposing to extend our previous limited approval of the motor vehicle emissions budgets to new budgets to be developed as part of a SIP submission meeting the Extreme area requirements for the Coachella Valley.

**DATES:** Written comments must arrive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0953 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Khoi Nguyen, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, or by email at [nguyen.khoi@epa.gov](mailto:nguyen.khoi@epa.gov).

**SUPPLEMENTAL INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## **I. Reclassification as Extreme Nonattainment and Extreme Area SIP Requirements**

### *A. Reclassification as Extreme and Applicable Attainment Date*

Effective July 20, 2012, the EPA designated and classified the Riverside County

(Coachella Valley), California, nonattainment area (“Coachella Valley”) as “Severe-15” nonattainment for the 2008 ozone NAAQS.<sup>1</sup> Air quality in the Coachella Valley is jointly overseen by the South Coast Air Quality Management District (“District”) and the California Air Resources Board (CARB). The Coachella Valley is located within a portion of Riverside County, and its geographic borders also include Indian country under the jurisdiction of six federally recognized tribes.<sup>2</sup> Our classification of the Coachella Valley as a Severe-15 ozone nonattainment area established a requirement that the area attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than 15 years from the date of designation as nonattainment, i.e., July 20, 2027.<sup>3</sup>

On November 15, 2022, CARB submitted a request to the EPA seeking a voluntary reclassification of the Coachella Valley from Severe-15 to Extreme for the 2008 ozone NAAQS.<sup>4</sup> We are proposing to approve CARB’s reclassification request under the “voluntary reclassification” provisions of section 181(b)(3) of the Act, which mandates that the EPA approve such a request. Upon final reclassification, the applicable attainment dates will be as expeditiously as practicable, but no later than 20 years from the area’s date of designation as nonattainment, i.e., July 20, 2032.

Because the State of California does not have jurisdiction over Indian country geographically located within the borders of the state, CARB’s request to reclassify the Coachella Valley does not apply to Indian country under the jurisdiction of the tribes identified in 40 CFR 81.305. In these areas of Indian country, the EPA implements federal CAA programs, including reclassifications, consistent with our discretionary authority under sections 301(a) and

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<sup>1</sup> 77 FR 30088 (May 21, 2012). The 2008 ozone NAAQS is 0.075 parts per million (ppm), daily maximum 8-hour average. The 2008 ozone NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm. See 40 CFR 50.15.

<sup>2</sup> For a precise definition of the boundaries of the Coachella Valley 2008 ozone nonattainment area, see 40 CFR 81.305.

<sup>3</sup> Throughout this document, we use “Severe” to refer to Severe areas that have 15 years to attain the ozone standards.”

<sup>4</sup> Letter dated November 15, 2022, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX (submitted electronically November 15, 2022).

301(d)(4) of the CAA. When the EPA designated the Coachella Valley as nonattainment for the 2008 ozone NAAQS, we included the jurisdictional lands of the six federally recognized tribes located within the boundaries of the nonattainment area: the Agua Caliente Band of Cahuilla Indians; the Augustine Band of Cahuilla Mission Indians; the Cabazon Band of Cahuilla Indians;<sup>5</sup> the Santa Rosa Band of Cahuilla Indians; the Torres Martinez Desert Cahuilla Indians; and the Twenty-Nine Palms Band of Mission Indians.

This action does not reclassify any areas of Indian country within the Coachella Valley. Under the EPA's Consultation Policy, the EPA consults on a government-to-government basis with federally recognized tribal governments when the EPA's actions and decisions may affect tribal interests.<sup>6</sup> The EPA is currently undergoing this consultation process and any proposed reclassification of tribal lands will be addressed in a future rulemaking action.

#### *B. Clean Air Act Requirements for Extreme Ozone Nonattainment Area Plans*

##### *1. Extreme Area Plan Requirements*

Under CAA section 182(e), an attainment plan for an Extreme nonattainment area must include the elements required for a Severe area as well as additional plan elements for an Extreme area.<sup>7</sup> Where applicable, the plan elements should reflect the reduction of the major source threshold under 182(e) from 25 tons per year (tpy) for a Severe area to 10 tpy for an Extreme area. The requirements for an Extreme area plan include, but are not limited to: (1) base year emissions inventory (CAA sections 172(c)(3) and 182(a)(1)); (2) emissions statement rule (CAA section 182(a)(3)(B)); (3) New Source Review (NSR) program (CAA sections 172(c)(5), 173, 182(a)(2)(C), 182(d) and 182(d)(2)); (4) additional reasonably available control technology (RACT) rules to address sources subject to the lower Extreme area major source threshold (CAA section 182(b)(2)); (5) reasonably available control measures (RACM) demonstration (CAA

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<sup>5</sup> The designation table at 40 CFR 81.305 lists the Cabazon Band of Cahuilla Indians as the "Cabazon Band of Mission Indians," which was the federally recognized name of the tribe at the time of the designation.

<sup>6</sup> The EPA's Consultation Policy is available at <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>.

<sup>7</sup> CAA section 182(e) specifically excludes certain Severe area requirements from the Extreme area requirements, e.g., CAA section 182(c)(6), (7), and (8).

section 172(c)(1)); (6) attainment demonstration (CAA sections 172(c)(1) and 182(c)(2)(A)); (7) reasonable further progress (RFP) demonstration (CAA sections 172(c)(2), 182(b)(1), 182(c)(2)(B));<sup>8</sup> (8) contingency measures (CAA sections 172(c)(9) and 182(c)(9)); (9) enhanced vehicle inspection and maintenance program (CAA section 182(c)(3)); (10) clean fuels fleet program (CAA sections 182(c)(4)(A) and 246); (11) enhanced ambient air monitoring (CAA section 182(c)(1)); (12) transportation control strategies and measures to offset emissions increases from vehicle miles traveled (CAA section 182(d)(1)(A)); (13) CAA section 185 fee program (CAA sections 182(d)(3) and 185); and (14) use of clean fuels or advanced control technology for boilers (CAA section 182(e)(3)).

For the Coachella Valley, the District and State will need to submit a plan that includes all elements required under CAA section 182(e), and that demonstrates attainment of the 2008 ozone NAAQS as expeditiously as practicable but no later than July 20, 2032. The plan should identify adopted measures sufficient to make the required RFP and attainment demonstrations for the area.<sup>9</sup>

For areas initially designated Extreme, the CAA and the EPA's ozone SIP Requirements Rules (SRR) for the 2008 ozone NAAQS<sup>10</sup> generally provides, depending on the element, up to four years from the date of designation to submit the required SIP elements to the EPA. For the 2008 ozone NAAQS, the statutory deadline for SIP submissions for areas initially designated as Extreme was July 20, 2016. Under our general CAA section 301(a) authority, the EPA proposes to establish a deadline of 18 months from the effective date of the final reclassification for the State to submit SIP revisions addressing the Extreme area requirements for the Coachella Valley.

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<sup>8</sup> CAA section 182(e) does not allow the state to use the provision at CAA section 182(c)(2)(B)(ii) that allows RFP reductions of less than three percent per year based on additional demonstrations.

<sup>9</sup> CAA section 182(e)(5) allows the EPA to approve an Extreme area attainment demonstration based on anticipated development of new control techniques or improvement of existing control technologies. This option requires a state to demonstrate that provisions based on these new techniques or improvements are not necessary to meet emission reductions required within the first 10 years after an area's designation as Extreme, and to submit, at least three years before implementation of the proposed provisions relying on new technology, contingency measures to be implemented in case the anticipated technologies do not achieve the planned reductions. Based on the shorter timeline to attainment (roughly nine years from reclassification), use of CAA section 182(e)(5) is not appropriate in this instance.

<sup>10</sup> The EPA promulgated the SRR for the 2008 ozone NAAQS at 40 CFR part 52, subpart AA.

This timeframe is consistent with how the EPA has handled establishing SIP submission deadlines under CAA section 182(i) for ozone areas reclassified by operation of law under CAA section 181(b)(2),<sup>11</sup> and generally aligns with the timeframe established in our prior reclassification of the Coachella Valley to Extreme for the 1997 ozone NAAQS.<sup>12</sup> We recognize that the District and CARB will require adequate time to develop and implement new measures and strategies, revise local rules, complete necessary analysis and demonstrations, and to provide adequate opportunities for public involvement.<sup>13</sup> The State must ensure that all required planning elements for an Extreme nonattainment area are satisfied, that public processes are completed, and that the resulting plan is sufficient to demonstrate attainment of the 2008 ozone NAAQS in the Coachella Valley as expeditiously as practicable but no later than July 20, 2032.

RACT controls for an area reclassified to a higher nonattainment classification should be implemented no later than the ozone season of the attainment year for the new classification, i.e., the ozone season immediately preceding the maximum attainment date.<sup>14</sup> For the Coachella Valley, which has a year-round ozone season and which would have a July 20, 2032 attainment date for an Extreme classification, RACT controls would need to be implemented by January 1, 2031.

## 2. NSR and Title V Program Revisions

Reclassification to Extreme ozone nonattainment triggers several changes under the CAA's NSR and title V permitting programs. Under CAA sections 182(e) and 182(f), sources in Extreme nonattainment areas are defined as "major sources" of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) under the NSR and title V permitting programs if they emit at least 10 tpy of these pollutants, compared to 25 tpy in a Severe nonattainment area. Additionally, under CAA section 182(e)(1), emissions from new major sources of VOC or NO<sub>x</sub> and major

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<sup>11</sup> See 87 FR 60926 (October 7, 2022) (providing 18 months from effective date of final reclassification of areas to Severe). See also discussion in proposal at 87 FR 21825, 21838.

<sup>12</sup> 85 FR 2311 (January 15, 2020) (establishing deadline roughly 19 months after reclassification effective upon publication).

<sup>13</sup> See id. at 2312.

<sup>14</sup> See 40 CFR 51.1312(a)(3)(ii).

modifications in an Extreme nonattainment area must be offset at a rate of at least 1.5 to 1 (or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use best available control technology). Further, under CAA section 182(e)(2), any change at a major stationary source that results in an increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source is generally considered a modification, subject to additional provisions for emissions increases that are offset through internal reductions and for equipment that is installed to comply with CAA requirements.

Accordingly, in addition to the required plan revisions discussed in section I.B.1 of this action, we are proposing to require the State to submit revised rules for the Coachella Valley that reflect the Extreme area definitions for new major sources and major modifications, and that increase the offset ratios for these sources and modifications consistent with CAA section 182(e)(1) and (2), by no later than 18 months from the effective date of the EPA's final reclassification of the area to Extreme. We are also proposing to require the State to submit any changes to the title V operating permits program for the Coachella Valley necessary to reflect the change in the major source threshold from 25 (tpy) for Severe areas to 10 tpy for Extreme areas by no later than 18 months from the effective date of final reclassification. The rationale for the EPA's deadline of 18 months from the effective date of the final action for this reclassification is discussed in Section I.B.1.

State lands in the Coachella Valley are already classified as Extreme for the 1997 ozone NAAQS,<sup>15</sup> and we recognize that certain Extreme area requirements may already be met through existing rules. In lieu of submitting new revised regulations to address these requirements, the State may provide a written statement certifying that it has determined that existing regulations are adequate to meet the applicable nonattainment area planning requirements of CAA section 182.

## **II. Motor Vehicle Emissions Budgets**

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<sup>15</sup> 84 FR 32841 (July 10, 2019).

Under our transportation conformity rule, as a general matter, once motor vehicle emission budgets (“budgets”) are approved, they can only be superseded by revised budgets that the EPA approves as a SIP revision. In other words, approved budgets generally cannot be superseded through an EPA adequacy finding of revised budgets, but rather only through EPA approval of the revised budgets, unless the initial approval of the budgets specifies that the EPA is limiting the duration of the approval to last only until subsequently submitted budgets are found adequate.<sup>16</sup>

In our previous action on the Severe area plan, we limited the duration of the approval of the budgets to last only until the effective date of the EPA’s adequacy finding for any subsequently submitted budgets.<sup>17</sup> We limited our approval in response to a request by CARB, in light of the EPA’s then-recent approval of EMFAC2017 as an updated version of the model (EMFAC2014) used for the budgets in the 2016 Coachella Valley Ozone SIP.<sup>18</sup> CARB stated that without the ability to replace the budgets using the budget adequacy process, the benefits of using the updated data might not be realized for a year or more after the updated SIP revision (with the EMFAC2017-derived budgets) was submitted, due to the length of the SIP approval process. We found CARB’s explanation appropriate and accordingly limited the duration of the budgets.

As part of the recent reclassification request, the State also requested that the EPA revise our previous limited approval of the budgets for the Coachella Valley to allow the existing SIP-approved budgets for the Severe area plan to be replaced with new budgets for the Extreme area plan. Similar to the previous request, CARB indicated that the new budgets being developed for the SIP will be based on EMFAC2017, whereas the budgets for the SIP-approved Severe area plan were developed using EMFAC2014. We find that CARB’s explanation for limiting the

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<sup>16</sup> 40 CFR 93.118(e)(1).

<sup>17</sup> 85 FR 57714 (September 16, 2020).

<sup>18</sup> EMFAC is short for EMISSION FACTOR. On December 15, 2015, the EPA approved EMFAC2014 for use by State and local governments to meet CAA requirements. 80 FR 77337. On August 15, 2019, the EPA approved and announced the availability of EMFAC2017 for use by State and local governments to meet CAA requirements. See 84 FR 41717.



duration of the approval of the budgets is still appropriate and provides us with a reasonable basis on which to continue to limit the duration of the approval of the budgets to the new Extreme area plan. We also note that on November 15, 2022, the EPA approved and announced the availability of EMFAC2021 for use by State and local governments to meet CAA requirements.<sup>19</sup> Therefore, we propose to continue to limit the duration of our approval of the budgets in the 2016 Coachella Valley Ozone SIP until we find revised budgets developed for the Extreme area plan to be adequate.

### **III. Summary of Proposed Action and Request for Public Comment**

Pursuant to CAA section 181(b)(3), we are proposing to grant CARB's request to reclassify the Coachella Valley ozone nonattainment area from Severe-15 to Extreme for the 2008 ozone NAAQS. Upon reclassification, the new attainment dates for the Coachella Valley ozone nonattainment area would be as expeditiously as practicable, but no later than July 20, 2032, for the 2008 ozone NAAQS. This action would not reclassify any areas of Indian country within the Coachella Valley. The EPA is proposing to establish a deadline of no later than 18 months from the effective date of the final reclassification action for the State to submit revisions to the Coachella Valley portion of the California SIP to meet the additional requirements applicable to Extreme ozone nonattainment areas.

Lastly, the EPA is proposing to continue to limit the duration of our approval of the budgets in the 2016 Coachella Valley Ozone SIP until we find revised budgets developed for the Extreme area plan to be adequate.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and

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<sup>19</sup> 87 FR 68483 (November 15, 2022). As indicated in this action, the CAA requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP revision is developed and thus there is no grace period for use of EMFAC2021 in SIP revisions. However, the EPA also recognizes the time and level of effort that air quality planning agencies may have already undertaken in SIP development using EMFAC2017. Agencies should consult with EPA Region IX if they have questions about how the EPA's approval of EMFAC2021 affects SIP revisions under development in specific nonattainment or maintenance areas.

**ADDRESSES** sections at the beginning of this preamble.

#### **IV. Statutory and Executive Order Reviews**

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. With respect to Indian country, reclassifications do not establish deadlines for air quality plans or plan revisions. For these reasons, this proposed action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

In addition, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and that this proposed action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

This proposed action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the

federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The State did not evaluate environmental justice considerations as part of its reclassification request. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This proposed action also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 5, 2023.

**Martha Guzman Aceves,**  
*Regional Administrator,*  
*Region IX.*

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